

## Draft

### Section 220.1 Definition of Supplements.

Supplements, as defined in subdivision 5(b) of section 220 of the Labor Law, may include, but are not necessarily limited to, medical, dental or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or training or other similar programs, but only where the contractor or subcontractor is not required by other Federal, State or local law to provide such benefit.

### Section 220.2 Contribution and computation of supplements.

(a) For purposes of subdivision 3 of section 220 of the Labor Law, supplements shall include the amount of:

(1) any contribution irrevocably made by a contractor or subcontractor on behalf of laborers, workers or mechanics to a fund, plan or program to provide supplements but shall not include the amount of any contribution purported to be made on behalf of laborers, workers or mechanics who are excluded from participation in the fund, plan or program for any reason other than a bona fide waiting period determined by the Commissioner to be reasonable for purposes of complying with Article 8 of the Labor Law.

(2) The cost to the contractor or subcontractor which is actually incurred in providing bona fide supplements not covered by paragraph (1) of this subdivision to laborers, workers and mechanics, ~~provided such supplements are enumerated in the current annually determined prevailing wage rate schedule promulgated by the Commissioner of Labor for the applicable trade or occupation in the locality.~~

(b) Any portion or all of the supplements obligations of a contractor or subcontractor may be satisfied by paying to the laborers, workers and mechanics affected in cash with the regular weekly wages, the cost of such supplement(s) as contained in the current annually determined prevailing wage rate schedule .

(c)(1) An employer must furnish to the Commissioner of Labor, upon request, within 10 days, proof of any supplements provided or amounts paid to or on behalf of its employees in satisfaction of its obligation to provide prevailing supplements.

(2) If an employer provides any supplement which is part of a fund, plan or program as set forth in paragraph (a)(1) of this section, it must furnish to the Commissioner of Labor, upon request, within 10 days, proof that the supplement is provided through a fund, plan or program and the amount contributed on the employees' behalf to such fund, plan or program.

(3) The failure of an employer to provide the Commissioner of Labor with proof of any prevailing supplements paid or provided to or on behalf of its employees shall result in an investigatory finding that supplements were not paid or provided in violation of the second unnumbered paragraph of subdivision 3 of section 220 of the Labor Law.

(d) To determine the hourly cash equivalent of any applicable supplement provided to or on behalf of laborers, workers and mechanics employed upon public work projects in accordance with subdivision (a) of this section, the Commissioner of Labor will:

(1) divide the actual contribution or cost for providing such supplement by ~~the total annual actual~~ hours worked on both public and private work annually or during the appropriate time period described below, where such proof is provided to the Commissioner of Labor by the employer, provided that;

(A) when a contribution or cost is paid regularly on a less than annual basis, e.g., weekly, monthly, quarterly, the Commissioner will use such shorter time period when calculating the hourly cash equivalent of such contribution; and

(B) the actual hours used by the Commissioner in his calculations shall be the hours worked by employees on both public and private work, except that the Commissioner shall use only the hours worked by the employees on public work subject to the provisions of Article 8 of the Labor Law to determine the hourly cash equivalent of:

(i) a pension plan that provides for immediate participation by an employee and one hundred per cent vesting after an employee works no more than five hundred hours, and

(ii) any fund, plan or program where the employee may elect to receive the full supplement contribution in cash including, but not limited to, certain cafeteria plans, where such proof is provided to the Commissioner by the employer.

(2) divide the actual annual contribution or cost for providing such supplement by 2080 hours (8 hours per day x 5 days per week x 52 weeks), where proof of the total annual hours worked by the employee on both public and private work is not provided to the Commissioner of Labor by the employer;

(3) divide the actual annual contribution or cost for providing such supplement by 1820 hours (7 hours per day x 5 days per week x 52 weeks), where proof of the total annual hours worked by the employee on both public and private work is not provided to the Commissioner of Labor by the employer but proof is provided establishing that the employee worked only 7 hours per day (excluding meal periods).